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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of:	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Leased Commercial Access	)	CS Docket No. 96-60
	)	
To: The Commission	)	

JOINT COMMENTS

E! Entertainment Television, Inc. ("E!"), Television Food Network ("TVFN"), America's Health Network ("AHN"), NorthWest Cable News ("NWCN"), and The Providence Journal Company ("Journal")[1] (all commentors referred to hereinafter collectively as "Networks"), hereby submit their comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced leased commercial access proceeding. In the comments set forth below, the Networks will: (1) explain the basis of their concern with key aspects of the FNPRM's leased channel rate formula; (2) explain why channel leasing is not an attractive option for the Networks at this time; and (3) suggest alternatives to the course of action the FNPRM contemplates.

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[1] The Providence Journal Company is participating in this proceeding as Managing General Partner of TVFN, majority owner of AHN and sole owner of NWCN.

I. BASIS OF CONCERN

Since two entrepreneurs launched a channel featuring movie trailers into two million cable households in the Los Angeles area in 1987, E! has become a highly-rated and fast-growing network with an expanding library of original programming on the world of entertainment. Catering to the worldwide fascination with movies, television and entertainment industry celebrities, E! is now distributed to 40 million U.S. cable subscribers, and E! programming is seen in 147 countries around the world. TVFN, launched in 1993, currently reaches 15.5 million households and is the only 24-hour, advertiser-supported cable network providing television programming related to the preparation, enjoyment and consumption of food. AHN provides 24-hour basic cable programming principally featuring call-in programs designed for health-conscious adults. Although AHN was launched only this past March, it has an audience of over 600,000 cable households and expects to pass the 1.4 million subscriber mark by mid-summer. Seattle-based NWCN was launched in December, 1995, to bring quality regional news to cable subscribers in the Pacific Northwest on a continuous, 24-hour basis. NWCN is available in approximately 1.3 million homes.

In contrast to the broad-based appeal of many of the services in the first generation of cable programming, the Networks, like many of their counterparts in the second and third generation, provide viewers with entire channels targeted to specialized interests. The launch of national services as distinct as E!, TVFN and AHN and the emergence of regional channels like NWCN have been instrumental in the development of the multi-faceted programming choices that exist for viewers today.

Thus, the Networks' achievements are the realization of the policy goal of greater television program diversity. The existence and continued growth of these and other cable networks reflect the diversity and volume of programming which flourishes in response to consumer demand. Ironically, however, changes in the rate structure for leased commercial access proposed by the FNPRM could place in jeopardy the continued growth and prosperity of sources of some of the most unique and original programming currently on television. Simply put, the proposed changes would give leased access programmers an extreme economic advantage over other networks. As a result, consumers would receive less of the diverse programming created by the Networks in response to consumer demand.

Based on their discussions with cable system affiliates and with contacts on the operating side of the industry, the Networks believe that the new rules will force cable operators to make their few remaining channels (as well as channels that are currently occupied) available to lessees on an extremely low-cost basis. Although the mandatory set-aside of channels for leased programming dates back to 1984,[2] the recently-proposed reduction in the cost of channel leases will give programmers who are willing to enter the market through leasing an unfair advantage over the Networks and other programmers who elect to pursue a more traditional economic relationship with cable systems, which requires an extraordinary investment in quality programming to create and maintain consumer demand. This is not what Congress intended leased access to accomplish. The prospect of guaranteed, low-cost (or, in some cases, free) channels

[2] Cable Communications Policy Act of 1984, P.L. No. 98-549 § 612, 98 Stat. 2780, 2782 (1984) (codified as amended 47 U.S.C. § 532 (1988)).

can be expected to generate a massive increase in the demand for leases. Moreover, because they are among the most recent occupants of many systems' cable channels, the Networks and other providers of specialized-format programming also are the most vulnerable to displacement.[3]

II. THE LEASED CHANNEL OPTION

If channels that are generally in short supply can be obtained more readily through leased access, it is natural to ask why the Networks do not view leasing as an opportunity instead of a threat. There are several important reasons. First, at the time the Networks were established, the dominant economic model for non-premium cable programming involved dual revenue streams -- one from advertising revenues and another from subscriber-based affiliate fees. The Networks' initial business plans, subsequent budgets and future financial commitments are based on this economic model. The existence or eventual expectation of affiliate license fees is an integral part of the Networks' financial plans and is essential to support the quality and variety of programming needed to attract subscribers. In fact, in a network's early years when start-up losses are incurred, the cost of programming often exceeds all revenues. If the affiliate fee revenue stream is abruptly removed from the equation, (and, in fact, becomes an expense line to cover the costs of leasing channel space) a network will be forced to reduce its programming budget. As the quality of programming suffers, a

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[3] In an era of diminishing channel capacity, competition for dial position has become more and more intense. Newer programming services that have only recently achieved widespread carriage or that are in the process of demonstrating their value often lack bargaining power to insist upon uninterrupted carriage or guaranteed channel position.

reduction in the size of the audience and, hence, in advertising revenues will follow. In a leased channel relationship with cable systems -- even if the channel costs little or nothing -- programmers lose the option of affiliate fees. In E!'s case, this would mean a loss of approximately 45% of its revenues, which are primarily invested in the development of quality programming.

While it may be theoretically possible for programming ventures based on the existing economic model to adapt to a new system, the plain facts are that a model favoring leased access carriage will shift revenues from the creation of diverse programming of the type and quality demanded by consumers, to the leasing of channel space, regardless of consumer preferences. Moreover, the Networks will not have had an adequate opportunity to evaluate the impact or change their operations by the time the rules go into effect. The Networks respectfully submit that there has not been sufficient opportunity for anyone to fully assess the impact of a major shift to a new economic model. It is possible that a closer examination may reveal that the leased access model is of limited utility and may even impede the goal of program diversity.

III. ALTERNATIVES TO THE COMMISSION'S PROPOSAL

A. Channel Lease Rates

As noted above, the Networks' concerns with the FNPRM center on the proposed "cost/market" formula. The Networks fear that adoption of this formula would result in an immediate and drastic reduction in the cost of leasing a channel. Yet the Act contains no mandate supporting major rate reductions: Congress did not guarantee that leased access be affordable to every would-be programmer, nor does the

Act mandate that all channels set aside for leased commercial access be fully occupied. Conditions in the programming marketplace today differ greatly from conditions that existed when leased access was established in 1984. In light of today's variety and abundance of programming choices and the emergence of distribution outlets (for example, wireless systems, DBS and, soon, telco-provided open video systems), the role of leased access in insuring program diversity is no longer crucial. It is just one of a number of mechanisms that are available.

In these circumstances, there is no need for changes designed to make rates universally affordable or to facilitate full occupancy of leased access set-asides. Thus, if the Commission is committed to changing the current rate formula, it would be more than justified in taking a more moderate approach that does not result in subsidies or give-aways to leased access programmers.

B. Avoidance of Disruption

The experience of the Networks in obtaining cable carriage suggests that the majority of cable systems will have to drop at least some of their existing programming services in order to accommodate sudden, heavy demand for leased channels. This certainly will have an adverse impact on services that are dropped; it also will adversely affect the consumer. Accordingly, if leased channel rates are reduced, the Networks support three measures to minimize the amount of disruption:

1. Recognition of the validity of contractual rights protecting existing services from deletion. The Commission must make clear that the leased access rules are not intended to modify existing contracts,

including provisions requiring carriage for the duration of the contract term;

2. A transition period of at least five years until lower rates go into effect on systems that must delete existing programming to accommodate leased commercial access usage; and

3. Flexible or negotiated channel placement for leased access programming. Contrary to the tentative conclusion in paragraphs 118-120 of the FNPRM, leased access programmers should not be entitled to placement on a particular tier or tiers. For the Networks and other non-leasing programmers, channel position is a matter of negotiation, as it is for leased access programs under the rules and that should continue to be.

IV. CONCLUSION

The Networks joining in these comments are proud to have made significant contributions to the variety of programming choices available to cable viewers today; however, the commitments that have resulted in their success to date and that are needed to insure their continued future growth are based on certain economic principles. A sudden disruption of the economic underpinnings of the current programming industry will have an especially harsh effect on programmers like E!, which at last is at the point of true viability, or TVFN, AHN and NWCN, which are off to promising starts as cable networks. There is no evidence that a drastic reduction in the current leased channel rates will result either in greater diversification in programming sources or more diverse programming choices for viewers. To the contrary, there are strong indications that such a dramatic change actually will threaten diversity, to the ultimate detriment of the viewing public. For these reasons, the Networks urge the Commission to reconsider the FNPRM's proposals as suggested in these comments.

Respectfully submitted,

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May 15, 1996